

1 HONORABLE RONALD B. LEIGHTON
2
3
4
5
6
7
8

9
10 UNITED STATES DISTRICT COURT
11 WESTERN DISTRICT OF WASHINGTON
12 AT TACOMA

13 CRAIG WEIGHALL,
14 Plaintiff,

v.

15 LT. PEA, et al,
16 Defendants.

Case No. C06-5663RBL

ORDER

17 THIS MATTER comes on before the above-entitled Court upon Plaintiff's Motion to Dismiss
18 Without Prejudice [Dkt. #74]. Having considered the entirety of the records and file herein, the Court
19 finds and rules as follows:

20 This case arises out of an incident in the Lewis County Jail which occurred in mid-2005.

21 On December 24, 2008 the defendants filed motions for summary judgment. Plaintiff did not
22 respond to the motions. On May 6, 2009 Magistrate Judge Karen L. Strombom filed a Report and
23 Recommendation recommending that the motions be granted. On May 14, 2009 plaintiff filed a motion
24 for an extension of time to file objections to the Report and Recommendation and on June 8, 2009 this
25 Court granted plaintiff's motion and directed that plaintiff file his objections no later than June 30, 2009.
26 Rather than file objections to the Report and Recommendation, plaintiff filed the instant motion on June
27 29, 2009. Defendants object to the entry of an Order of Dismissal Without Prejudice because plaintiff has
28 failed to conform to the requirement of Fed. R. Civ. P. 41(a). Specifically, Rule 41 (a)(1)(A)(ii) requires

1 that once defendant has answered or moved for summary judgment, the plaintiff may not voluntarily
2 dismiss his action without leave of Court except by stipulation of all parties involved. Defendants state
3 that no stipulation has been entered.

4 Defendants are correct as to the requirements of Fed. R. Civ. P. 41 (a)(1); however, the Court may
5 grant plaintiff's motion over defendants' objection under Fed. R. Civ. P. 41(a)(2). Because the Court has
6 determined that dismissal under the rule will not prejudice the defendants, Plaintiff's Motion to Dismiss
7 Without Prejudice is **GRANTED**. All other pending matters are **MOOT**

8 || IT IS SO ORDERED.

9 The Clerk shall send uncertified copies of this order to all counsel of record, and to any party
10 appearing pro se.

11 || Dated this 7th day of July, 2009.

Ronald B. Leighton
RONALD B. LEIGHTON
UNITED STATES DISTRICT JUDGE